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15 Attorneys for Defendants L'ORÉAL USA, INC.  
16 and MAYBELLINE LLC

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19  
20 LIAT ORSHANSKY, on behalf of herself  
and others similarly situated,

21 Plaintiffs,

22 vs.

23 L'OREAL USA, INC. , a Delaware  
24 corporation; MAYBELLINE, LLC, a New  
York limited liability company dba  
25 MAYBELLINE, NEW YORK,

26 Defendants.  
27  
28

Case No. 3:12-cv-06342-CRB

**DEFENDANTS L'OREAL USA, INC. AND  
MAYBELLINE LLC'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Defendants L’Oreal USA, Inc. and Maybelline LLC (together “Defendants”), by and  
 2 through their undersigned attorneys, respond to the March 8, 2013 First Amended Complaint of  
 3 Plaintiff Liat Orshansky (“Orshansky”), on behalf of herself and all others similarly situated, as  
 4 follows:

5 1. Defendants neither admit nor deny the allegations of paragraph 1, as they  
 6 state a legal conclusion to which no response is necessary.

7 2. Defendants neither admit nor deny the allegations of paragraph 2, as they  
 8 state a legal conclusion to which no response is necessary.

9 3. Defendants admit that they and/or their affiliates sell certain cosmetic  
 10 products directly to distributors and/or retailers in California, and that they market and promote  
 11 certain cosmetic products in California, and deny the remaining factual allegations of paragraph  
 12 3. Defendants neither admit nor deny the remaining allegations of paragraph 3, as they state a  
 13 legal conclusion to which no response is necessary.

14 4. Defendants neither admit nor deny the allegations of paragraph 4, as they  
 15 state a legal conclusion to which no response is necessary.

16 5. Defendants neither admit nor deny the allegations of paragraph 5, as they  
 17 state a legal conclusion to which no response is necessary.

18 6. Defendants deny knowledge or information sufficient to admit or deny the  
 19 allegations of paragraph 6.

20 7. Defendants admit that L’Oreal USA, Inc. is a Delaware corporation that  
 21 does business in California, and deny the remaining factual allegations of paragraph 7.

22 8. Defendants admit that Maybelline LLC is a New York limited liability  
 23 company that does business in California, and deny the remaining factual allegations of paragraph  
 24 8.

25 9. Defendants admit that they and/or their affiliates manufacture cosmetic  
 26 products including Super Stay 14 HR Lipstick, Super Stay 10 Stain Gloss, Voluminous False  
 27 Fiber Lashes, and Volum’Express The Falsies (collectively, the “Cosmetic Products”), and deny  
 28 the remaining factual allegations of paragraph 9.

10. Defendants admit that they and/or their affiliates sell the Cosmetic Products directly to distributors and/or retailers in the United States, and that consumers can purchase the Cosmetic Products via some online retail sites. Defendants deny the remaining factual allegations of paragraph 10.

11. Defendants admit the allegations of paragraph 11.

12. Defendants admit that Maybelline LLC's online advertisements for Super Stay 14 HR Lipstick state that it has "[s]uper rich color with super staying power" and "[s]uper rich color that lasts for 14 hours," that it involves "[n]o dragging," "[n]o drying," and "[n]o letdowns at all," and states that "pigments are enveloped in a longwearing system." Defendants deny the remaining factual allegations of paragraph 12.

13. Defendants admit that Maybelline LLC's online advertisements for Super Stay 10 Stain Gloss state that it is the "first-ever 10HR stain gloss," that its "[s]hine enhancing formula glides on lightweight color that won't dry out," and that it "[f]eels fresh all day, never dry." Defendants deny the remaining factual allegations of paragraph 13.

14. Defendants admit that the packaging for Voluminous False Fiber Lashes states that it has a "lash sculpting fiber formula" that "adheres to lashes for a volumized, sculpted lash effect," and that "[l]ashes appear fuller, longer, sculpted and curled from every angle," and that it is "[c]lump-free, [f]lake-free, [s]mudge-free." Defendants admit that the packaging shows three images of "volumizing fibers" and states that "[v]isuals are dramatized." Defendants admit that L'Oreal USA, Inc.'s online advertisements for Voluminous False Fiber Lashes state that it is "[c]lump-free," "[f]lake-free," and "[s]mudge-free," and that it "will easily remove with soap and water." Defendants deny the remaining factual allegations of paragraph 14.

15. Defendants admit that the packaging for Volum'Express The Falsies states that it "provide[s] the look of more lashes," "instantly build[s] volume," and has a "false lash effect." Defendants deny the remaining factual allegations of paragraph 15.

16. Defendants deny the allegations of paragraph 16.

17. Defendants deny knowledge or information sufficient to admit or deny the allegations of paragraph 17 regarding Orshansky's experience with and purchase of the Cosmetic

1 Products or other cosmetic products, and deny the remaining factual allegations of paragraph 17.

2 18. Defendants deny knowledge or information sufficient to admit or deny the  
3 allegations of paragraph 18 regarding Orshansky's experience with and purchase of the Cosmetic  
4 Products, and deny the remaining factual allegations of paragraph 18.

5 19. Defendants deny knowledge or information sufficient to admit or deny the  
6 allegations of paragraph 19 regarding complaints, and deny the remaining factual allegations of  
7 paragraph 19.

8 20. Defendants deny knowledge or information sufficient to admit or deny the  
9 allegations of paragraph 20 regarding Orshansky's experience with advertisements for the  
10 Cosmetic Products, repeat and re-allege their responses to paragraphs 12 through 15 as if fully set  
11 forth herein, and deny the remaining factual allegations of paragraph 20.

12 21. Defendants deny knowledge or information sufficient to admit or deny the  
13 allegations of paragraph 21 regarding Orshansky's experience with advertisements for the  
14 Cosmetic Products, repeat and re-allege their responses to paragraph 16 as if fully set forth herein,  
15 and deny the remaining factual allegations of paragraph 21.

16 22. Defendants deny knowledge or information sufficient to admit or deny the  
17 allegations of paragraph 22.

18 23. Defendants deny knowledge or information sufficient to admit or deny the  
19 allegations of paragraph 23 regarding Orshansky's experience with and purchase of the Cosmetic  
20 Products, repeat and re-allege their responses to paragraphs 12 through 15 as if fully set forth  
21 herein and deny the remaining factual allegations of paragraph 23.

22 24. Defendants deny knowledge or information sufficient to admit or deny the  
23 allegations of paragraph 24 regarding Orshansky's experience with and purchase of the Cosmetic  
24 Products and Orshansky's experience with other "Defendants' products," and repeat and re-allege  
25 their responses to paragraphs 12 through 16 as if fully set forth herein.

26 25. Defendants deny knowledge or information sufficient to admit or deny the  
27 allegations of paragraph 25 regarding Orshansky's experience with and purchase of the Cosmetic  
28

1 Products, repeat and re-allege their responses to paragraphs 12 through 16 as if fully set forth  
 2 herein, and deny the remaining factual allegations of paragraph 25.

3 26. Defendants admit that Orshansky sent a letter to L'Oreal USA, Inc. and  
 4 Maybelline LLC dated December 13, 2012, and refer the Court to that letter for its contents.  
 5 Defendants deny the remaining factual allegations of paragraph 26.

6 27. Defendants neither admit nor deny the allegations of paragraph 27, as they  
 7 state a legal conclusion to which no response is necessary.

8 28. Defendants neither admit nor deny the allegations of paragraph 28, as they  
 9 state a legal conclusion to which no response is necessary.

10 29. Defendants neither admit nor deny the allegations of paragraph 29, as they  
 11 state a legal conclusion to which no response is necessary.

12 30. Defendants neither admit nor deny the allegations of paragraph 30, as they  
 13 state a legal conclusion to which no response is necessary.

14 31. Defendants neither admit nor deny the allegations of paragraph 31, as they  
 15 state a legal conclusion to which no response is necessary.

16 32. Defendants neither admit nor deny the allegations of paragraph 32, as they  
 17 state a legal conclusion to which no response is necessary.

18 33. Defendants neither admit nor deny the allegations of paragraph 33, as they  
 19 state a legal conclusion to which no response is necessary.

20 34. Defendants neither admit nor deny the allegations of paragraph 34, as they  
 21 state a legal conclusion to which no response is necessary.

22 35. Defendants repeat and re-allege their responses to paragraphs 1 through 34  
 23 as if fully set forth herein.

24 36. Defendants neither admit nor deny the allegations of paragraph 36, as they  
 25 state a legal conclusion to which no response is necessary.

26 37. Defendants deny the allegations of paragraph 37.

27 38. Defendants deny the allegations of paragraph 38.

28 39. Defendants deny the allegations of paragraph 39.

1           40. Defendants neither admit nor deny the allegations of paragraph 40, as they  
2 state a legal conclusion to which no response is necessary, and object to the relief requested and  
3 deny that Orshansky is entitled to any relief whatsoever.

4           41. Defendants admit that Orshansky sent a letter to L'Oreal USA, Inc. and  
5 Maybelline LLC dated December 13, 2012, and refer the Court to that letter for its contents.  
6 Defendants deny the remaining factual allegations of paragraph 41.

7           42. Defendants repeat and re-allege their responses to paragraphs 1 through 41  
8 as if fully set forth herein.

9           43. Defendants deny the allegations of paragraph 43.

10          44. Defendants deny the allegations of paragraph 44.

11          45. Defendants deny the allegations of paragraph 45.

12          46. Defendants neither admit nor deny the allegations of paragraph 46, as no  
13 facts are alleged therein, and object to the relief requested and deny that Orshansky is entitled to  
14 any relief whatsoever.

15          47. Defendants repeat and re-allege their responses to paragraphs 1 through 46  
16 as if fully set forth herein.

17          48. Defendants deny knowledge or information sufficient to admit or deny the  
18 allegations of paragraph 48.

19          49. Defendants deny knowledge or information sufficient to admit or deny the  
20 allegations of paragraph 49.

21          50. Defendants deny the allegations of paragraph 50.

22          51. Defendants deny the allegations of paragraph 51.

23          52. Defendants neither admit nor deny the allegations of paragraph 52, as no  
24 facts are alleged therein, and object to the relief requested and deny that Orshansky is entitled to  
25 any relief whatsoever.

26          53. Defendants repeat and re-allege their responses to paragraphs 1 through 52  
27 as if fully set forth herein.

28          54. Defendants deny the allegations of paragraph 54.

1                   55.     Defendants deny the allegations of paragraph 55.

2                   56.     Defendants neither admit nor deny the allegations of paragraph 56, as they  
3 state a legal conclusion to which no response is necessary, and deny the remaining factual  
4 allegations of paragraph 56.

5                   57.     Defendants neither admit nor deny the allegations of paragraph 57, as they  
6 state a legal conclusion to which no response is necessary, and deny the remaining factual  
7 allegations of paragraph 57.

8                   58.     Defendants deny the allegations of paragraph 58.

9                   59.     Defendants neither admit nor deny the allegations of paragraph 59, as they  
10 state a legal conclusion to which no response is necessary, and object to the relief requested and  
11 deny that Orshansky is entitled to any relief whatsoever.

12                  60.     Defendants neither admit nor deny the allegations of paragraph 60, as they  
13 state a legal conclusion to which no response is necessary, and object to the relief requested and  
14 deny that Orshansky is entitled to any relief whatsoever.

15                  61.     Defendants repeat and re-allege their responses to paragraphs 1 through 60  
16 as if fully set forth herein.

17                  62.     Defendants deny the allegations of paragraph 62.

18                  63.     Defendants deny the allegations of paragraph 63.

19                  64.     Defendants deny the allegations of paragraph 64.

20                  65.     Defendants deny the factual allegations of paragraph 65, neither admit nor  
21 deny the remaining allegations of paragraph 65, as they state a legal conclusion to which no  
22 response is necessary, and object to the relief requested and deny that Orshansky is entitled to any  
23 relief whatsoever.

24                  66.     Defendants repeat and re-allege their responses to paragraphs 1 through 65  
25 as if fully set forth herein.

26                  67.     Defendants deny the allegations of paragraph 67.

27                  68.     Defendants deny the allegations of paragraph 68.

28

69. Defendants deny the factual allegations of paragraph 69, and neither admit nor deny the remaining allegations of paragraph 69, as they state a legal conclusion to which no response is necessary.

70. Defendants neither admit nor deny the remaining allegations of paragraph 70, as they state a legal conclusion to which no response is necessary, and object to the relief requested and deny that Orshansky is entitled to any relief whatsoever.

71. Defendants neither admit nor deny the allegations of the Prayer for Relief as there are no facts alleged therein. Defendants object to the relief requested and deny that Plaintiffs are entitled to any relief whatsoever.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to assert her claims.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the First Amendment to the Constitution of the United States and/or by the free speech provisions of the New York and California state constitutions.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims fail to state a claim upon which relief can be granted.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations or repose.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff and/or any member of the purported class failed to exercise reasonable care and diligence to mitigate her alleged damages.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, laches, acquiescence and/or estoppel.



**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's action is not proper for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for damages, including but not limited to punitive damages, are unconstitutional both facially and as applied to Defendants pursuant to the First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States, and applicable analogous provisions of the New York and California state constitutions.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because any representation or statement alleged to have been made by Defendants was made in good faith and with a reasonable belief as to its validity and accuracy and with reasonable belief that all of Defendants' conduct was lawful.

**RESERVATION OF RIGHTS**

Defendants reserve the right to assert additional legal defenses as they become known. Defendants further specifically reserve all legal defenses that they may have against the purported class and against each member of the purported class.

**PRAYER FOR RELIEF**

WHEREFORE, L'Oreal USA, Inc. and Maybelline LLC respectfully pray that the First Amended Complaint be dismissed in its entirety, that the Court finds that this suit cannot be maintained as a class action, that Defendants be awarded their costs and attorneys' fees, and that the Court order such other and further relief as it deems just and proper.

DATED: March 22, 2013

FARELLA BRAUN + MARTEL LLP

By: /s/ C. Brandon Wisoff  
C. Brandon Wisoff

Attorneys for Defendants  
L'OREAL USA, INC. AND MAYBELLINE LLC

**DEMAND FOR JURY TRIAL**

Defendants L'Oreal USA, Inc. and Maybelline LLC hereby demand a trial by jury on all issues so triable.

Dated: March 22, 2013

FARELLA BRAUN + MARTEL LLP

By: /s/ C. Brandon Wisoff  
C. Brandon Wisoff

Attorneys for Defendants  
L'OREAL USA, INC. AND MAYBELLINE LLC